

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

<b>In the Matter of:</b>	)	
	)	
<b>Murphy-Brown of Missouri LLC</b>	)	
<b>d/b/a Smithfield Hog Production</b>	)	<b>Order No. 2021-WPCB-1679</b>
	)	
<b>Proceeding under the</b>	)	
<b>Missouri Clean Water Law</b>	)	

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**ADMINISTRATIVE ORDER ON CONSENT**

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The issuing of this Administrative Order on Consent (AOC) No. 2021-WPCB-1679, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Murphy-Brown of Missouri LLC d/b/a Smithfield Hog Production (Respondent) violated the Missouri Clean Water Law (MCWL) at Respondent's Somerset Farm. This AOC is issued under the authorities of Section 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**FINDINGS OF FACT**

1. The Respondent is a foreign Limited Liability Company registered and in good standing with the Missouri Secretary of State.

2. The Respondent owns and operates a Class IA Concentrated Animal Feeding Operation (CAFO) called Somerset Farm, that consists of 17 complexes, made up of 8 confinement buildings with shallow concrete pits, anaerobic lagoon, and secondary containment. The CAFO is located in multiple but adjacent parcels in north Mercer County.

3. Murphy-Brown of Missouri LLC d/b/a Smithfield Hog Production holds Missouri State Operating Permit No. MO-0118168 (Permit) for the CAFO, and operates the CAFO.

4. The Permit authorizes the operation of a no-discharge CAFO in accordance with the terms and conditions of the Permit. General Condition 1 of the Permit requires the Respondent to store and land apply all wastewater to prevent discharges from the storage structures and land application sites. Special Condition 2.a prohibits all discharges of process wastewater except for emergency discharges from lagoons or uncovered storage structures in certain situations and under certain conditions established in Special Condition 2.e. of the Permit.

5. The CAFO is permitted to hold up to 60,058 animal units of swine over and under 55 lbs. as established by the Permit. In the event of unauthorized or emergency discharges, the receiving stream for Outfall Nos. 001, 002, 003, 004, 007 is a tributary to Little Medicine Creek, and for Outfall Nos. 005, 006, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, and 074 the receiving stream is a tributary to West Fork Medicine Creek.

6. Swine effluent is a water contaminant as the term is defined by Section 644.016(24), RSMo.

7. Little Medicine Creek, West Fork Medicine Creek, and their tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

8. Sediment or other substances in sufficient amounts to cause unsightly color or turbidity violates general criteria for water quality standards as established in 10 CSR 20-7.031(4)(C).

9. On March 4, 2021, at approximately 9:00 a.m., CAFO staff notified the Department that swine effluent had been released overnight and had left the property. CAFO staff reported that on March 3, 2021, an employee was pumping stormwater off the top of lagoon covers, and stopped pumping at approximately 3:00 p.m., but mistakenly failed to close the pump valves in the correct sequence, resulting in the release of swine effluent into the receiving streams. CAFO staff became aware of the discharge upon returning to the CAFO the morning of March 4, 2021, and notified the Department within 24 hours as required by Standard Conditions Part I, Section B.2.b of the Permit.

10. In response to the notification of discharge, Department staff conducted an investigation and inspection of the CAFO on March 4, 2021. During the inspection, CAFO staff explained that the siphoning occurred at Sites J, K, L, F, and M due to the CAFO employee not following procedures. CAFO staff reported that, in response to the discharge, some dams were placed in the tributaries and water was being pumped out and returned to the lagoons.

11. During the inspection, Department staff observed sites J, K, L, F, and M, as well as the tributaries and freshwater lakes. Much of the water observed was dark in color and had an odor of swine effluent. At Site J, Department staff observed yellow hoses on top of the lagoon cover, which CAFO staff reported are used to remove stormwater collected on top of the lagoon cover.

12. Department staff then traveled with CAFO staff to observe the impact of the discharge to the tributaries. While traveling on Avalon Street, Department staff observed at the

intersection where Avalon Street intersect with a Tributary to West Fork Medicine Creek that the tributary appeared dark in color and had a malodor associated with swine effluent. CAFO staff stated that siphoning at Site M had to have occurred to flow to this location, and noted that this meant there were now five sites at which the siphoning occurred: J, K, L, F, and now M. CAFO staff stated that flow from the stormwater basin at Site M would travel to the south freshwater lake on the north side of Avalon Street. No deceased or distressed aquatic life was observed in the tributary at this location.

13. Department staff then observed the tributary to Little Medicine Creek on the north and south sides of Award Street, and observed that the water in the tributary was dark in color and had a malodor associated with swine effluent. No deceased or distressed aquatic life was observed in the tributary at these locations.

14. Department staff then observed Little Medicine Creek at the Highway M Bridge, and observed that the water in the creek was dark in color and had a malodor associated with swine effluent.

15. CAFO staff stated that a dam was constructed to help pump water contaminated with swine effluent near Badger/Wolf Brantley Farm, another CAFO owned by the Respondent, approximately 10 miles downstream.

16. Department staff then traveled off of CAFO property and observed the tributary to West Fork Medicine Creek downstream of the bridge at 107<sup>th</sup> Street, and observed that the water in the tributary was dark in color and had a malodor associated with swine effluent.

17. Department staff then traveled farther downstream from the CAFO and observed West Fork Medicine Creek at Highway M upstream and downstream of the bridge, and observed that the water in the creek was clear and no odor was detected.

18. Department staff then traveled back to the CAFO and observed the freshwater lakes, and observed that the south freshwater lake was overflowing into the north freshwater lake, and that water overflowing from the north freshwater lake was clear with no odor detected.

19. On March 5, 2021, Tom Huffman, Missouri Department of Conservation, stated that there was not a fish kill or distressed aquatic life observed during the fish kill investigation.

20. On March 8, 2021, CAFO staff stated that cleanup was ongoing, and that the final estimate of effluent released consisted of 500,000 gallons; an estimated 200,000 gallons that entered the freshwater lake on the CAFO property and an estimated 300,000 gallons released into the receiving streams.

21. Based on the violations documented during the March 4, 2021, inspection, the Department issued Notice of Violation No. NE210012 to the Respondent on March 30, 2021.

22. On July 21, 2021, Department staff met with representatives of the Respondent to discuss the violations and corrective actions that have been undertaken at Somerset Farm. The Respondent reported that the valves on the pump that were responsible for the illicit discharge had been redesigned to prevent siphoning of lagoon effluent from occurring.

23. The MCWL and Section 644.096, RSMo, authorize the State to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the State to their condition as they existed before the violation, sustained by it because of any violation.

#### **STATEMENT OF VIOLATIONS**

The Respondent has violated the MCWL and its implementing regulations as follows:

24. Failed to operate a no-discharge facility as a no-discharge facility, as required by Special Condition 2.a. of the Permit, in violation of Section 644.076.1, RSMo;

25. Discharged water contaminants into tributaries to West Fork Medicine Creek and Little Medicine Creek, waters of the State, which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of General Condition 6 of the Permit, Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031(4)(A) and -(C); and

26. Caused pollution to tributaries to West Fork Medicine Creek and Little Medicine Creek, waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

#### **AGREEMENT**

27. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations.

28. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

29. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The penalty contained in this AOC was calculated using the Penalty Assessment Protocol established in 10 CSR 20-3.010.

30. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, is ordered and agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$18,800.50. The payment shall be in the form of a check made payable to "Mercer County Treasurer, as custodian of the Mercer County School Fund." The check in the amount of \$18,800.50 is due and payable upon execution of this AOC by the Respondent. The check and signed copy of the AOC shall be delivered to:

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

31. The Respondent is ordered and agrees to pay the Department's investigative costs and damages in the amount of \$3,231.91. This amount shall be due upon the Respondent's signature and submittal of this AOC. The check shall be made payable to "State of Missouri" and shall be delivered along with a signed copy of the AOC to:

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

32. This AOC shall terminate when the administrative penalty and Department's investigative costs and damages are paid in full.

33. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification for any other requirements of the MCWL and regulations, or any other source of law. Nor does this AOC resolve any future violations of this AOC or any law or regulation. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

34. Nothing in this AOC forgives the Respondent from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

35. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

36. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for their records.

#### **NOTICE OF APPEAL RIGHTS**

37. By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATORY AUTHORITY

Agreed to and Ordered on this 17 day of December, 2021



Michael Rainwater, General Manager

Agreed to and Ordered on this 17 day of December, 2021



DEPARTMENT OF NATURAL RESOURCES

Chris Wieberg, Director

Water Protection Program

c: Irene Crawford, Director, Northeast Regional Office  
Operating Permits Section  
General Counsel's Office  
Accounting Program  
Fiscal Management Section